

**AMENDMENT TO
INTERCONNECTION AGREEMENT
BETWEEN
WISCONSIN BELL, INC. d/b/a SBC WISCONSIN
AND
SPECTROTEL, INC.**

This Lawful UNEs Amendment is to the Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the "Amendment") by and between Wisconsin Bell, Inc. d/b/a SBC Wisconsin¹ ("SBC Wisconsin") and Spectrotel, Inc. ("CLEC").

WHEREAS, SBC Wisconsin and CLEC are parties to a certain Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("Act"), as may have been amended prior to the date hereof (the "Agreement");

WHEREAS, pursuant to Section 252(a)(1) of the Act and the terms of their Agreement, the Parties wish to amend the Agreement to ensure that the obligations related to unbundled network elements remain consistent with applicable law; and

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

The following Sections "Lawful Provision of Access to Unbundled Network Elements ("Lawful UNEs")" and "Transition Procedure" are hereby added to the Appendix, Agreement, Article or Section of the Agreement related generally to unbundled network elements, and shall apply, notwithstanding any language in the Agreement to the contrary, including, without limitation, any intervening law, change in law or other substantively similar provision. If the Agreement already contains terms and conditions generally related to SBC Wisconsin's obligation to provide access to unbundled network elements under the Act, then such terms and conditions shall be replaced by the following Sections in their entirety. Further, all references in the Agreement to "UNE(s)" or "unbundled network elements" shall be deemed to have been replaced or supplemented, as applicable, with the defined term "Lawful UNEs" as set forth in Section "Lawful Provision of Access to Unbundled Network Elements," below:

1. Lawful Provision of Access to Unbundled Network Elements ("Lawful UNEs")

1.1 This Article of the Agreement sets forth the terms and conditions pursuant to which **SBC Wisconsin** will provide CLEC with access to unbundled network elements (UNEs) under Section 251(c)(3) of the Act in **SBC Wisconsin's** incumbent local exchange areas for the provision of Telecommunications Services by CLEC; provided, however, that notwithstanding any other provision of the Agreement, **SBC Wisconsin** shall be obligated to provide UNEs only to the extent required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, and may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. UNEs that **SBC Wisconsin** is required to provide pursuant to Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders ("Lawful UNEs"), shall be referred to in this Agreement as "**Lawful UNEs**."

1.1.1 By way of example only, if terms and conditions of this Agreement state that **SBC Wisconsin** is required to provide a Lawful UNE or Lawful UNE combination or other arrangement including a "Lawful UNE Dedicated Transport," and Dedicated Transport is not a Lawful UNE under law and

¹ Wisconsin Bell, Inc. ("Wisconsin Bell"), a Wisconsin corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the States of Illinois, Indiana, Michigan, Ohio and Wisconsin. Wisconsin Bell offers telecommunications services and operates under the names "SBC Wisconsin" and "SBC Ameritech Wisconsin", pursuant to assumed name filings with the State of Wisconsin. Ameritech Corporation is a wholly owned subsidiary of SBC Communications, Inc.

effective FCC rules and associated lawful and effective FCC and judicial orders, then **SBC Wisconsin** shall not be obligated to provide the item as an unbundled network element, whether alone or in combination with or as part of any other arrangement under the Agreement.

- 1.2 Nothing contained in the Agreement shall be deemed to constitute consent by **SBC Wisconsin** that any item identified in this Agreement as a UNE or Lawful UNE is a network element or UNE under Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, that **SBC Wisconsin** is required to provide to CLEC alone, or in combination with other network elements or UNEs (Lawful or otherwise), or commingled with other network elements, UNEs (Lawful or otherwise) or other services or facilities.
- 1.3 The preceding includes without limitation that **SBC Wisconsin** shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving **SBC Wisconsin** network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes.
- 1.4 Notwithstanding any other provision of this Agreement or any Amendment to this Agreement, including but not limited to intervening law, change in law or other substantively similar provision in the Agreement or any Amendment, if an element described as an unbundled network element or Lawful UNE in this Agreement should cease to be a Lawful UNE at any time, then the Transition Procedure defined in Section 2, below, shall govern. For purposes of the Agreement “cease to be a Lawful UNE” means any situation where **SBC Wisconsin** is not required, or is no longer required, to provide a network element on an unbundled basis pursuant to Section 251(c)(3) of the Act. The Parties agree that, notwithstanding the Effective Date of this Amendment, such situations include, but are not limited to (a) the issuance of the mandate in *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (“USTA I”); or (b) by operation of the *Triennial Review Order* released by the FCC on August 21, 2003 in CC Docket Nos. 01-338, 96-98 and 98-147 (the “Triennial Review Order” or “TRO”), which became effective as of October 2, 2003, including rules promulgated thereby; or (c) the issuance of a legally effective finding by a court or regulatory agency acting within its lawful authority that requesting Telecommunications Carriers are not impaired without access to a particular network element on an unbundled basis; or (d) the issuance of the mandate in the D.C. Circuit Court of Appeals’ decision, *United States Telecom Association v. FCC*, Case No. 00-1012 (D.C. Cir. 2004) (“USTA II”); or (e) the issuance of any valid law, order or rule by the Congress, FCC or a judicial body stating that **SBC Wisconsin** is not required, or is no longer required, to provide a network element on an unbundled basis pursuant to Section 251(c)(3) of the Act.
 - 1.4.1 By way of example only, an element described as an unbundled network element or Lawful UNE in this Agreement can cease to be a Lawful UNE on a categorical basis, on an element-specific, route-specific or geographically-specific basis or a class of elements basis. Under any scenario, Section 2 “Transition Procedure” shall apply.

2. Transition Procedure

- 2.1 **SBC Wisconsin** shall only be obligated to provide Lawful UNEs under this Agreement. To the extent an element described as a Lawful UNE or an unbundled network element in this Agreement should cease to be a Lawful UNE, **SBC Wisconsin** may discontinue the provision of such element, whether previously provided alone or in combination with or as part of any other arrangement with other Lawful UNEs or other elements or services. Accordingly, in the event one or more elements described as Lawful UNEs or as unbundled network elements in this Agreement should cease to be Lawful UNEs, **SBC Wisconsin** will provide written notice to CLEC of its discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. During a transitional period of thirty (30) days from the date of such notice, **SBC Wisconsin** agrees to continue providing such element(s) under the terms of this Agreement. Upon receipt of such written notice, CLEC will cease ordering new elements that are identified as no longer being Lawful UNEs in the **SBC Wisconsin** notice letter referenced in this Section 2.1. **SBC Wisconsin** reserves the right to audit the CLEC orders transmitted to **SBC Wisconsin** and to the extent that the CLEC has processed orders and such orders are provisioned after this 30-day transitional period, such elements are still subject to this Section 2, including the options set forth in (a) and

(b) below, and **SBC Wisconsin's** rights of discontinuance or conversion in the event the options are not accomplished. During such 30-day transitional period, the following options are available to CLEC with regard to the element(s) identified in the **SBC Wisconsin** notice, including the combination or other arrangement in which the element(s) were previously provided:

- (a) CLEC may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or
- (b) **SBC Wisconsin** and CLEC may agree upon another service arrangement or element (e.g. via a separate agreement at market-based rates or resale), or may agree that an analogous access product or service may be substituted, if available.
 - i. In the case of UNE-P, the substitute product or service shall be Resale; and
 - ii. In the case of loops and transport, the substitute product or service shall be the analogous access product, if available.

Notwithstanding anything to the contrary in this Agreement, including any amendments to this Agreement, at the end of that thirty (30) day transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under (a), above, and if CLEC and **SBC Wisconsin** have failed to reach agreement, under (b), above, as to a substitute service arrangement or element, then **SBC Wisconsin** may, at its sole option, disconnect the element(s), whether previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available.

- 2.2 The provisions set forth in this Section 2 "Transition Period" are self-effectuating, and the Parties understand and agree that no amendment shall be required to this Agreement in order for the provisions of this Section 2 "Transition Period" to be implemented or effective as provided above. Further, Section 2 "Transition Period" governs the situation where an unbundled network element or Lawful UNE under this Agreement ceases to be a Lawful UNE even where the Agreement may already include an intervening law, change in law or other substantively similar provision. The rights and obligations set forth in Sections 1 and 2, above, apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.
- 3. This Amendment may require that certain sections of the Agreement shall be replaced and/or modified by the provisions set forth in Paragraph 1, above (for example, all references in the Agreement to "UNE(s)" or "unbundled network elements" shall be deemed to have been replaced or supplemented, as applicable, with the defined term "Lawful UNEs" as set forth in Section "Lawful Provision of Access to Unbundled Network Elements," above). The Parties agree that such replacement and/or modification shall be accomplished without the necessity of physically removing and replacing or modifying such language throughout the Agreement.
 - 4. Nothing in this Amendment shall be deemed to amend or extend the term of the Agreement, or to affect the right of a Party to exercise any right of termination it may have under the Agreement.
 - 5. Upon written request of either Party, the Parties will amend any and all Agreement pricing schedules to accurately reflect the terms and conditions of this Amendment.
 - 6. Notwithstanding any contrary provision in the Agreement, this Amendment, or any **SBC Wisconsin** tariff, nothing contained in the Agreement, this Amendment, or any **SBC Wisconsin** tariff shall limit **SBC Wisconsin's** right to appeal, seek reconsideration of or otherwise seek to have stayed, modified, reversed or invalidated any order, rule, regulation, decision, ordinance or statute issued by the State Commission, the FCC, any court or any other governmental authority related to, concerning, or that may affect **SBC Wisconsin's** obligations under the Agreement, this Amendment, any **SBC Wisconsin** tariff, or Applicable Law.
 - 7. Any performance measures and remedies identified in the Agreement apply solely to UNEs which **SBC Wisconsin** is obligated to offer under Section 251(c)(3) of the Act. If an unbundled network element or Lawful UNE under this Agreement ceases to be a Lawful UNE, **SBC Wisconsin** will have no obligation to report on or

pay remedies for any measures associated with such element, notwithstanding any language to the contrary in the Agreement.

8. In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC*, et. al, 535 U.S. 467 (2002); *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36), and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including this and any other amendments to the Agreement), SBC Wisconsin shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (rel. April 21, 2004). The Parties acknowledge and agree that SBC Wisconsin has exercised its option to adopt the FCC ISP terminating compensation plan ("FCC Plan") in Wisconsin and as of the Effective Date of Agreement (i.e. MFN Provisions and Amendments) the FCC Plan shall apply to this Agreement, as more specifically provided for in the Separate Reciprocal Compensation Amendment. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.
9. The Parties acknowledge and agree that this Amendment shall be filed with, and is subject to approval by the Public Service Commission of Wisconsin and shall become effective ten (10) days following approval by such Commission.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this _____ day of _____, 2004, by SBC Wisconsin, signing by and through its duly authorized representative, and CLEC, signing by and through its duly authorized representative.

Spectrotel, Inc.

Wisconsin Bell, Inc. d/b/a SBC Wisconsin by SBC Telecommunications, Inc., its authorized agent

By: _____

By: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Title: *For/* President – Industry Markets

Date: _____

Date: _____

FACILITIES-BASED OCN # _____

ACNA _____